



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: William B. Storch--Relocation Expenses--
Cancelled Transfer
File: B-226282
Date: July 20, 1987

DIGEST

Employee seeks reimbursement of real estate expenses incident to cancelled transfer. Employee was reassigned from Buffalo, New York, to New York City, effective September 1, 1985, in connection with an agency determination that its Buffalo office would be closed. After the sale of his house in Buffalo, and completion of a househunting trip to New York City, the employee was notified on August 30, 1985, of an offer of a position with another Government agency in Buffalo which employee accepted. Losing agency agreed to reassign and detail employee back to Buffalo District Office until September 22, 1985, predicated on employee's acceptance of new Government position in Buffalo. Where cancellation of transfer was determined to be in the best interest of the Government and employee remains in Government service for 12 months following the cancellation date of the transfer, relocation expenses may be paid. Since duty station has not changed, employee is treated as if transfer was completed and employee was retransferred to former duty station.

DECISION

This decision is in response to a request from Thomas C. Komarek, Assistant Secretary for Administration and Management, Department of Labor. It concerns whether a former employee of the Department may be reimbursed for relocation expenses incurred incident to a cancelled permanent change of station in September 1985. We hold that the employee may be reimbursed for the following reasons.

BACKGROUND

The employee, Mr. William B. Storch, was notified by memorandum dated May 15, 1985, that he was being involuntarily reassigned effective September 1, 1985, by the Pension and Welfare Benefits Administration, Department of Labor (Labor), from Buffalo, New York, to Boston, Massachusetts, as a result of the closing of the Buffalo District Office. However, Mr. Storch was also given an

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opportunity to request consideration for alternative office reassignment to any other Area Office. Mr. Storch responded by requesting consideration for reassignment to the New York City Area Office. By memorandum dated July 12, 1985, Mr. Storch was notified that his alternate reassignment request to New York City was accepted and would be effective September 1, 1985. This memorandum stated that failure to report would result in the initiation of removal action from the Federal service which would be considered as involuntary and not for personal cause. Along with the reassignment notice, Mr. Storch was provided with an additional memorandum containing information relating to the reassignment including a statement that Labor would make every effort to assist employees who do not wish to relocate in finding comparable positions in other Federal agencies in the same area.

On July 3, 1985, Mr. Storch executed an agreement to remain in Government service for 12 months. He and his wife traveled on a househunting trip to New York City, and signed a contract to sell their home in Buffalo pursuant to Labor's authorization of reimbursement for permanent change-of-station expenses.

The Defense Contract Audit Agency (DCAA) Buffalo Branch Office, orally offered Mr. Storch a comparable position on August 30, 1985, which was subsequently confirmed in writing with a reporting date of September 23, 1985. Mr. Storch contemporaneously notified Labor of his acceptance of the DCAA offer allowing him to remain in Buffalo. By memorandum dated September 4, 1985, Labor notified Mr. Storch that predicated upon his acceptance of the new position with the Department of Defense, DCAA, Mr. Storch was reassigned and detailed to the Buffalo District Office, Labor, until September 22, 1985, so that there would be no break in service before he reported to DCAA.

On September 2, 1985, after accepting the August 30th job offer from DCAA allowing him to remain in Buffalo, Mr. Storch entered into a contract to purchase a house in Buffalo because he had already sold his house in connection with the relocation transfer to New York City.

On September 9, 1985, Mr. Storch submitted a travel voucher for his househunting trip and on October 21, 1985, submitted a travel voucher for the sale of his house in Buffalo. These vouchers totaled \$1,265.68 and \$9,043, respectively. The certifying officer concluded that reimbursement could be made if the cancellation was in the interest of the Government. The certifying officer asked the New York Area Acting Administrator whether the cancellation was in the interest of the Government. The Acting Area Administrator replied

that the cancellation was in the interest of the Government with respect to any costs incurred by Mr. Storch "up to the point he accepted the new position in Buffalo." Based on this determination, the certifying officer approved the payment of the travel vouchers for the househunting trip and the sale of the residence in Buffalo.

On January 17, 1986, Mr. Storch submitted a travel voucher requesting reimbursement of \$3,766 in expenses incurred in purchasing a replacement home in Buffalo. The certifying officer requested a determination from the Comptroller of the Department of Labor as to whether Mr. Storch could be reimbursed for these expenses. The Comptroller requested the National Office, Pension and Welfare Benefits Administration, to provide a written determination that Mr. Storch's cancellation was in the interest of the Government. The National Office responded that although it determines which relocation actions are in the interest of the Government, at the time of Mr. Storch's move there was a major consolidation of offices in the Pension and Welfare Benefits Administration and during that time, Area Administrators in consultation with the National Office determined whether relocations were in the interest of the Government. As indicated above, the Acting Area Administrator did determine that Mr. Storch's cancellation was in the interest of the Government with respect to any costs incurred by Mr. Storch "up to the point he accepted his new position in Buffalo." However, approximately a year later the National Office informed the Comptroller that with respect to Mr. Storch, it is now its belief that the cancellation was solely in the interest of Mr. Storch and that it would agree to pay only those relocation expenses which it was legally obligated to pay.

Based on the facts submitted the Assistant Secretary asks to what extent relocation expenses may be paid to Mr. Storch.

OPINION

The reimbursement of relocation expenses including real estate expenses and househunting travel expenses incurred in connection with a Federal employee's change of duty station is governed by 5 U.S.C. § 5724a (1982), and the implementing regulations, Chapter 2, Part 6 of the Federal Travel Regulations (Supp. 4, August 23, 1982), incorp. by ref., 41 C.F.R. § 101-7.003 (1982) (FTR). Section 2-1.5a(1)(a) of the FTR requires an employee to execute a service agreement as a condition precedent to the payment of relocation expenses. That section also provides that failure by the employee to effect the transfer may constitute a violation of the service agreement and that funds expended by the

United States for travel, transportation, and allowances shall be recovered from the employee.

Generally when a transfer has been cancelled by the concerned agency and relocation expenses would have been reimbursable had the transfer been effected, an employee may be reimbursed for expenses incurred in anticipation of the transfer and prior to its cancellation. See Orville H. Myers, et al., 57 Comp. Gen. 447 (1978), Dwight L. Crumpacker, B-187405, March 22, 1977; and B-177439, February 1, 1973. If the employee's duty station did not change as a result of the cancelled transfer, then we have allowed reimbursement as if the transfer had been completed and the employee had been retransferred to his former duty station. Myers, supra; and, Crumpacker, supra. See also Thomas L. Briggs, B-192469, April 4, 1979. However, when a cancellation is the result of the employee's personal reasons and not for any official reason, the Government is not liable for the expenses incurred. Sandra A. Cossu, B-193969, June 5, 1980.

Of primary importance in deciding this issue is the determination and actions of the Acting Area Administrator. On being notified of Mr. Storch's acceptance of employment he detailed Mr. Storch to remain at Labor's Buffalo office and assist in the closing of that Office. Additionally, he concluded that the cancellation of the transfer was in the best interest of the Government. While reasons for these actions have not been given, we assume that substantial savings in relocation expenses was a consideration. Furthermore, the transfer was the result of a reduction-in-force situation and Labor had indicated that it intended to assist employees who wished to remain in the Buffalo area secure employment with other agencies. Therefore, we accept the Acting Area Administrator's determination that the cancellation of the transfer, while obviously benefitting Mr. Storch, was in the best interest of the Government.

Accordingly, Mr. Storch is entitled to retain amounts he received for the expenses he incurred for the househunting trip and the sale of his Buffalo residence, in the same manner as if he had been transferred. Further, he is entitled to allowable expenses incurred in connection with the purchase of his replacement home in Buffalo, since he should be treated as if he had been retransferred from New York City to Buffalo.

Finally, Labor was billed \$389.40 by the Government Bill of Lading contract mover as a cancellation fee even though Mr. Storch gave the mover 4 days notice that its services would not be needed. Labor requests an opinion as

to whether the Department or Mr. Storch is liable for this charge. The record suggests that Mr. Storch was not a direct party to the contract between the Government and the contract mover but was in the position of a third party beneficiary. Since he acted reasonably under the circumstances there would not appear to be any basis to view him as liable for this cancellation charge. We would suggest that the contract provisions be reviewed carefully by Labor and any other agency which may have been responsible for negotiating this contract on behalf of the Government with the contract mover with a view toward determining the rights of the respective parties. If the contract provisions do not specifically provide for monetary cancellation penalties of this nature, it may be that the contract mover's bill will not be certifiable for payment.

for *Harry R. Van Cleave*
Comptroller General
of the United States